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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

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Marc Hobe', a single man,

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No. CV-09-405-PHX-DGC

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Plaintiff,

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**ORDER**

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vs.

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United States Department of Education;  
Pioneer Recovery; and James Farrar,

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Defendants.

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Plaintiff Marc Hobe' commenced this action by filing a pro se complaint against Defendants United States Department of Education ("DOE"), James Farrar (in his official capacity as an employee of DOE), and Pioneer Recovery on February 27, 2009. Dkt #1. Defendants DOE and Farrar ("Federal Defendants") have moved to dismiss the complaint. Dkt. #19. That motion has been fully briefed. Dkt. ##22-25. For the following reasons, the Court will dismiss the complaint in its entirety without prejudice for lack of subject matter jurisdiction, granting the Federal Defendants' motion to dismiss and dismissing *sua sponte* as to Defendant Pioneer. All pending motions will be denied as moot.

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**I. Background.**

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In the early 1980s, Plaintiff borrowed a total of \$3459 in student loans guaranteed by the State of Arizona and reinsured by the DOE. Dkt. #19-2, Ex. 1, Decl. of Sheryl Davis at ¶¶ 7-8; Dkt. #1 ¶¶ 2-3. DOE records show that Plaintiff defaulted on the loans in 1985. Dkt. #19-2, Ex. 1 at ¶ 10. At that time, the lender had recorded no repayment of principal.

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1 *Id.* at ¶ 9.<sup>1</sup>

2 In 1995, DOE acquired title to the loans according to the terms of the original loan  
3 guarantee and reinsurance. *Id.* at ¶ 12. DOE began its attempts to collect payment from  
4 Plaintiff by way of collection letters and, later, wage garnishment and Treasury Department  
5 offsets. *Id.* at ¶ 14; Dkt. #1 ¶ 4. The DOE has no record of any voluntary payment by  
6 Plaintiff since 1995. Dkt. #19-2, Ex. 1 at ¶ 13. As of April 30, 2009, DOE records show  
7 that plaintiff still owes an outstanding debt of \$4,210.60. *Id.* at ¶ 15.

8 Defendant Pioneer acquired Plaintiff's account and began efforts to collect on  
9 Plaintiff's outstanding student loan debt.<sup>2</sup> Plaintiff alleges that Pioneer engaged in illegal or  
10 harassing collection tactics. Dkt. #1 ¶ 8. Defendant Pioneer denies any illegality or  
11 harassment. Dkt. #3 ¶ 4.

12 In or around 1995, Plaintiff alleges that he entered an oral contract with Defendant  
13 Farrar, an employee of DOE, revising the terms of Plaintiff's student loan debt. Dkt. #1  
14 ¶¶ 4-5. Plaintiff's allegations state that the terms of the oral contract (1) reset the amount of  
15 principal owed at \$3,500, (2) stipulated that interest would begin to accrue on May 25, 1993,  
16 and (3) decreased Plaintiff's monthly payment to \$100. *Id.* Plaintiff never received written  
17 confirmation of this agreement. *Id.* at 5. Plaintiff further alleges that he had a telephonic  
18 administrative hearing with a representative of DOE in 2002 regarding the alleged contract.  
19 *Id.* at 6.

20 In 2000, Plaintiff filed for bankruptcy. *In re Hobe*, No. 00-BK-1644 (Bankr. D.  
21 Ariz.); *see* Dkt. #1 ¶ 6. Seeking to discharge his student loan debt, Plaintiff initiated an  
22 adversary proceeding against DOE in 2003. *Hobe v. United States Dep't of Educ.*,  
23 No. 03-AP-0014 (Bankr. D. Ariz.). On January 26, 2004, Plaintiff's bankruptcy attorney and  
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25 <sup>1</sup>Plaintiff alleges that he borrowed these loans in 1981 and 1982, Dkt. #1 ¶¶ 2-3, while  
26 DOE records indicate that the loans were executed in 1983 and 1984, Dkt. #19-2, Ex. 1,  
27 Decl. of Sheryl Davis at ¶¶ 7-8.

28 <sup>2</sup>Plaintiff alleges that Defendant Pioneer acquired his account in 2007, Dkt. #1 ¶ 7;  
Defendant Pioneer denies that acquisition date, Dkt. #3 ¶ 4.

1 a representative of the DOE signed a Joint Pre-Trial Statement stipulating that, as of that  
2 date, Plaintiff was “indebted to the [DOE] in the amount of \$6,617.39 with accruing  
3 interest.” *Id.* at Dkt. #14, Joint Pre-Trial Statement, Jan. 26, 2004. The adversary proceeding  
4 was dismissed in February, 2004, with a judgment finding Plaintiff’s student loan debt to be  
5 non-dischargeable. *Id.* at Dkt. #17, Order Dismissing Adversary, Feb. 6, 2004; *Id.* at  
6 Dkt. #21, Amended Judgment, Feb. 17, 2004. Plaintiff filed an appeal of the adversary  
7 decision on February 23, 2004, alleging that his attorney signed the Joint Pre-Trial Statement  
8 in error and contesting the stipulated amount owed. *Id.* at Dkt. #22, Notice of Appeal,  
9 Feb. 23, 2004. On July 28, 2004, the appeal was dismissed for failure to prosecute. *Id.* at  
10 Dkt. #28, Order from BAP Dismissing Appeal, July 28, 2004.

11 While Plaintiff’s complaint does not raise any specific causes of action, the complaint  
12 generally alleges that Plaintiff no longer is indebted to Defendants. Dkt. #1. Plaintiff asserts  
13 that DOE wage garnishment and Treasury Department offsets have resulted in overpayment  
14 of his student loan debt. Dkt. #1 ¶¶ 5, 7-9, 11. Plaintiff also alleges that the debt was  
15 discharged in bankruptcy and that the debt was paid in full according to the terms of an oral  
16 contract between Plaintiff and Defendant DOE (through Defendant Farrar). Dkt. #1 ¶¶ 4-7.  
17 Plaintiff also disputes the amount of outstanding debt as stipulated in the bankruptcy Pre-  
18 Trial Statement, alleging that his attorney signed the statement in error. Dkt. #1 ¶ 7;  
19 Dkt. #23-2 ¶ 5. Plaintiff further alleges illegal recovery tactics and harassment in the course  
20 of collection attempts by Defendants DOE and Pioneer. Dkt. #1 ¶¶ 4-8, 10-12.

21 Plaintiff seeks an injunction barring future collection attempts by Defendants DOE  
22 and Pioneer. Dkt. #1 ¶ 9. Plaintiff also seeks actual damages totaling approximately  
23 \$1,290,300<sup>3</sup> and punitive damages in the amount of \$2,000,000 against Defendant Pioneer  
24 and \$10,000,000 against Defendant DOE. Dkt. #1 ¶¶ 10-12.

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27 <sup>3</sup> Actual damages sought include \$6,000 for lost GI Bill payments, \$1,250,000 for lost  
28 employment opportunity, \$4,300 for overpayment of debt, \$5,000 for harassment by  
Defendant Pioneer, and \$25,000 for breach of contract by Defendant Farrar. Dkt. #1  
¶¶ 10-11.

1 **II. Dismissal of the Complaint for Lack of Jurisdiction.**

2 “Federal courts are courts of limited jurisdiction. They possess only that power  
3 authorized by Constitution and statute[.]” *Kokkonen v. Guardian Life Ins. Co. of Am.*,  
4 511 U.S. 375, 377 (1994). Pursuant to federal statutes, this Court has subject matter  
5 jurisdiction over a case only if the complaint alleges a federal cause of action or the amount  
6 in controversy exceeds \$75,000 and the parties are citizens of different states. *See*  
7 28 U.S.C. §§ 1331, 1332(a).

8 “The party asserting jurisdiction has the burden of proving all jurisdictional facts.”  
9 *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990) (citing *McNutt v.*  
10 *Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)); *see Fenton v. Freedman*,  
11 748 F.2d 1358, 1359, n.1 (9th Cir. 1984). Courts must presume a lack of jurisdiction until  
12 the plaintiff proves otherwise. *Kokkonen*, 511 U.S. at 377. To overcome that presumption,  
13 the plaintiff must provide a statement of the grounds for the court’s subject matter  
14 jurisdiction. *See* Fed. R. Civ. P. 8(a) (“A pleading . . . must contain (1) a short and plain  
15 statement of the grounds for the court’s jurisdiction[.]”).

16 Plaintiff’s complaint contains no explanation of his claims and no statement of the  
17 basis for jurisdiction. Dkt. #1. The complaint alleges that Plaintiff is a resident of Arizona  
18 and that all of Defendant’s actions against Plaintiff took place within Arizona, Dkt. #1 ¶ 1,  
19 but this bare statement is not sufficient to invoke the Court’s jurisdiction. Plaintiff’s claims  
20 are not brought under any identified federal statute. *See* 28 U.S.C. § 1331. Nor does the  
21 complaint assert that the parties are citizens of different states. *See* 28 U.S.C. § 1332(a).

22 The Court accordingly will grant the Federal Defendants’ motion to dismiss and will  
23 dismiss all claims against Federal Defendants for lack of subject matter jurisdiction. *See*  
24 Fed. R. Civ. P. 12(h)(3); *Fiedler v. Clark*, 714 F.2d 77, 78 (9th Cir. 1983) (affirming  
25 dismissal of claims that did not state a federal cause of action).

26 Defendant Pioneer Recovery did not move to dismiss for lack of subject matter  
27 jurisdiction or raise lack of jurisdiction in its answer to the complaint. Dkt. #3. A federal  
28 court, however, “may dismiss *sua sponte* if jurisdiction is lacking.” *Fiedler*,

1 714 F.2d at 78-79 (citing *Mansfield, Coldwater & Lake Mich. R.y. v. Swan*, 111 U.S. 379,  
2 382 (1884)); see *Franklin v. Or. State Welfare Div.*, 662 F.2d 1337, 1342 (9th Cir. 1981);  
3 Fed. R. Civ. P. 12(h)(3) (“Whenever it appears by suggestion of the parties *or otherwise* that  
4 the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”  
5 (emphasis added)). Plaintiff has not shown that his claim against Pioneer is subject to federal  
6 question or diversity jurisdiction. The Court will dismiss the complaint against Defendant  
7 Pioneer *sua sponte* for lack of subject matter jurisdiction. See Fed. R. Civ. P. 12(h)(3);  
8 *Franklin*, 662 F.2d at 1343 (affirming *sua sponte* dismissal of claims that did not state a  
9 federal cause of action).

### 10 **III. Leave to Amend the Complaint.**

11 “The court should freely give leave [to amend a pleading] when justice so requires.”  
12 Fed. R. Civ. P. 15; see 28 U.S.C. § 1653 (authorizing amendment of pleadings to cure  
13 defective jurisdictional statement). In the Ninth Circuit, “[a] pro se litigant must be given  
14 leave to amend his or her complaint unless it is absolutely clear that the deficiencies of the  
15 complaint could not be cured by amendment.” *Karim-Panahi v. L.A. Police Dep’t*,  
16 839 F.2d 621, 623 (9th Cir. 1988) (citing *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir.  
17 1987)); see also *Waters v. Young*, 100 F.3d 1437, 1441 (9th Cir. 1996) (“As a general  
18 matter, this court has long sought to ensure that pro se litigants do not unwittingly fall victim  
19 to procedural requirements that they may, with some assistance from the court, be able to  
20 satisfy.”). The Court will dismiss the complaint without prejudice and allow Plaintiff to file  
21 an amended complaint, consistent with this order, that properly invokes the Court’s  
22 jurisdiction. Plaintiff shall have until **Friday, July 17, 2009**, to file an amended complaint.

23 The Court is required to give some guidance to a pro se plaintiff regarding the  
24 deficiencies of dismissed claims in a complaint. *Karim-Panahi*, 839 F.2d at 625. Plaintiff’s  
25 complaint has failed adequately to state the basis on which this Court may exercise  
26 jurisdiction over his claims against any of the Defendants. Plaintiff is advised that his  
27 amended complaint must include a “short and plain statement of the grounds” for this Court’s  
28 jurisdiction over each claim against each Defendant. Fed. R. Civ. P. 8(a). Pursuant to

1 federal statutes, this Court has subject matter jurisdiction over a case only if (a) the complaint  
2 alleges a federal claim (“federal question jurisdiction”) or (b) the amount in controversy  
3 exceeds \$75,000 and the parties are citizens of different states (“diversity jurisdiction”). *See*  
4 28 U.S.C. §§ 1331, 1332(a).

5 The Court has diversity jurisdiction over cases between citizens of different states  
6 involving claims greater than \$75,000 pursuant to 28 U.S.C. § 1332, which provides:  
7 “The district courts shall have original jurisdiction of all civil actions where the matter in  
8 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is  
9 between . . . citizens of different States.” 28 U.S.C. § 1332(a)(1). Section 1332 requires  
10 complete diversity between the parties. *See, e.g., Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 68  
11 (1996). In other words, the citizenship of each plaintiff must be diverse from the citizenship  
12 of each defendant. *Id.* In determining the existence of diversity jurisdiction, “corporations  
13 are citizens of both the state where they are incorporated and the state where they have their  
14 principal place of business.” *Tosco Corp. v. Cmtys. for a Better Env’t*, 236 F.3d 495, 499  
15 (9th Cir. 2001); 28 U.S.C. § 1332 (c)(1) (“[A] corporation shall be deemed to be a citizen of  
16 any State by which it has been incorporated and of the State where it has its principal place  
17 of business.”).

18 The Court also has subject matter jurisdiction over cases involving federal questions  
19 pursuant to 28 U.S.C. § 1331, which provides: “The district courts shall have original  
20 jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United  
21 States.” Section 1331 does not itself create federal jurisdiction; it “confers jurisdiction only  
22 where a federal question is otherwise at issue.” *Ellis v. Cassidy*, 625 F.2d 227, 229 (9th Cir.  
23 1980). In general, a federal question invokes a “right or immunity created by the  
24 Constitution or laws of the United States.” *Gully v. First Nat’l Bank*, 299 U.S. 109, 112  
25 (1936). That federal right or immunity “must be an element, and an essential one, of the  
26 plaintiff’s cause of action.” *Id.* While it is not an infallible rule, if federal law creates the  
27 cause of action, federal question jurisdiction will generally lie. *Murphey v. Lanier*,  
28 204 F.3d 911, 912 (9th Cir. 2000); *see Am. Well Works Co. v. Layne & Bowler Co.*,

1 241 U.S. 257, 260 (1916) (“A suit arises under the law that creates the cause of action.”).

2 **A. Amended Complaint against Defendant Pioneer.**

3 **1. Diversity of citizenship.**

4 If Plaintiff intends to invoke diversity as the basis for this Court’s jurisdiction over  
5 his claims against Defendant Pioneer, he must allege both that Plaintiff’s citizenship is  
6 diverse from that of Defendant Pioneer and that the amount in controversy exceeds \$75,000.  
7 *See* 28 U.S.C. § 1332(a). To that end, Plaintiff must include in his complaint a statement of:  
8 (a) his own state citizenship; (b) the citizenship of Defendant Pioneer (both Pioneer’s state  
9 of incorporation and the state of Pioneer’s principal place of business); and (c) an amount in  
10 controversy in excess of \$75,000. 28 U.S.C. § 1332(a), (c)(1). Plaintiff is directed to Form 7  
11 of the Appendix of the Federal Rules of Civil Procedure for a well-pleaded jurisdictional  
12 statement.

13 **2. Federal questions.**

14 If Plaintiff intends to invoke federal question jurisdiction in this Court, Plaintiff must  
15 in good faith allege claims against Defendant Pioneer “arising under the Constitution, laws,  
16 or treaties of the United States.” 28 U.S.C. § 1331. Plaintiff must explicitly assert a claim  
17 against Defendant on the basis of a *federal* statute, the *federal* Constitution, etc. Plaintiff is  
18 directed to Form 7 of the Appendix of the Federal Rules of Civil Procedure for a well-  
19 pleaded jurisdictional statement.

20 **B. Amended Complaint against Federal Defendants.**

21 **1. Diversity of citizenship.**

22 Plaintiff’s amended complaint should *not* assert diversity of citizenship as the  
23 jurisdictional basis for his claims against the Federal Defendants. Plaintiff should note that  
24 a federal agency is not the citizen of any state for diversity purposes. *Hancock Fin. Corp.*  
25 *v. Fed. Sav. & Loan Ins. Corp.*, 492 F.2d 1325, 1329 (9th Cir. 1974) (finding that because  
26 an entity was an agency of the federal government, it was the citizen of no state for diversity  
27 purposes); *see also Molton, Allen & Williams, Inc. v. Harris*, 436 F. Supp. 853, 855  
28 (D.D.C. 1977) (stating that, traditionally, diversity jurisdiction never lies in cases against

1 federal agencies since such agencies are citizens of no state for diversity purposes). Since  
2 diversity jurisdiction is available only for cases *between citizens of different states* and a  
3 federal agency is *not a citizen of a state*, diversity jurisdiction does not lie for Plaintiff's  
4 claims against Federal Defendants.

## 5 **2. Federal questions.**

6 Plaintiff may attempt to invoke this Court's jurisdiction through federal claims against  
7 the Federal Defendants. However, Plaintiff should be aware that, "[a]bsent a waiver,  
8 sovereign immunity shields the Federal Government and its agencies from suit." *FDIC v.*  
9 *Meyer*, 510 U.S. 471, 475 (1994). Since "[s]overeign immunity is jurisdictional in nature,"  
10 *Id.*, Plaintiff must establish *both* a federal question *and* a waiver of sovereign immunity as  
11 to the asserted federal cause of action to properly invoke this Court's jurisdiction. *See*  
12 *Alvarado v. Table Mountain Rancheria*, 509 F.3d 1008, 1016 (9th Cir. 2007) ("To confer  
13 subject matter jurisdiction in an action against a sovereign, in addition to a waiver of  
14 sovereign immunity, there must be statutory authority vesting a district court with subject  
15 matter jurisdiction."); *see also United States v. Mitchell*, 463 U.S. 206, 212 (1983) (stating  
16 that the government's consent to suit is a jurisdictional requirement). Plaintiff may also wish  
17 to consider the issues discussed in the Federal Defendants' Motion to Dismiss (Dkt. #19)  
18 when drafting an amended complaint.

## 19 **IV. Plaintiff's Obligations.**

20 Plaintiff is advised that he must become familiar with, and follow, the Federal Rules  
21 of Civil Procedure and the Rules of the United States District Court for the District of  
22 Arizona ("Local Rules"), which may be obtained in the Clerk of Court's office. For purposes  
23 of the amended complaint, Plaintiff is directed to Rule 8 of the Federal Rules of Civil  
24 Procedure. Rule 8(a) provides that a complaint "must contain (1) a short and plain statement  
25 of the grounds for the court's jurisdiction, . . . (2) a short and plain statement of the claim  
26 showing that the pleader is entitled to relief, and (3) a demand for the relief sought." Fed.  
27 R. Civ. P. 8(a). These pleading requirements shall be set forth in separate and discrete  
28 paragraphs. Rule 8(d) provides that each such paragraph "must be simple, concise, and

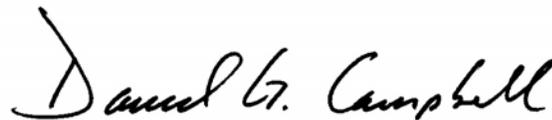
1 direct.” Fed. R. Civ. P. 8(d)(1). The forms contained in the Appendix to the Federal Rules  
2 of Civil Procedure – which include forms regarding jurisdictional statements and sample  
3 complaints on various causes of action – “suffice under the[] rules and illustrate the  
4 simplicity and brevity that the[] rules contemplate.” Fed. R. Civ. P. 84.

5 If Plaintiff fails to prosecute this action or to comply with the rules or any Court order,  
6 the Court may dismiss the action with prejudice pursuant to Federal Rule of Civil Procedure  
7 41(b). *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.1992) (holding that the  
8 district court did not abuse its discretion in dismissing a pro se plaintiff’s complaint for  
9 failing to comply with a court order).

10 **IT IS ORDERED:**

- 11 1. Plaintiff’s complaint (Dkt. #1) is **dismissed** without prejudice for lack of  
12 subject matter jurisdiction.
- 13 2. Plaintiff has until **July 17, 2009** to file an amended complaint consistent with  
14 this order.
- 15 3. The Clerk of Court shall **terminate** this action without further notice if  
16 Plaintiff fails to comply with this deadline.
- 17 4. All pending motions are **denied** as moot (see Dkt. #28).

18 DATED this 16th day of June, 2009.

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22 David G. Campbell  
23 United States District Judge  
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